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IN THE
Supreme Court of the United States

OCTOBER TERM, 1955

No.... [redacted] 101

SOC. ARMADORA DEL NORTE, a corporation, Claimant of the Steamship THEOGENNITOR, etc., *Petitioner,*

vs.

ARNE ARMUS LAHDE, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CHARLES B. HOWARD
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THE ARGUS PRESS, SEATTLE

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No.....

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Soc. Armadora Del Norte, a corporation, prays that a writ of certiorari issue to review the judgment and decree of the Court of Appeals for the Ninth Circuit in the above entitled Admiralty Cause, as entered and filed on March 16, 1955.

CITATIONS TO OPINIONS BELOW

The District Court for the Western District of Washington held with petitioner, first on oral opinion by Judge McLaughlin (R. 46) and later on written opinion by Judge Fee (R. 55), reported in 107 F.Supp. 664, 1952 A.M.C. 930 and 1953 A.M.C. 514. The opinion of the Court of Appeals for the Ninth Circuit (R. 107) is reported in 220 F.(2d) 357; 1955 A.M.C. 828.

JURISDICTION

The District Court entered its decree of dismissal October 29, 1953. (R. 77) The Court of Appeals for the Ninth Circuit entered its decree of reversal on March 16, 1955. (R. 114)

The jurisdiction of this Court is invoked under Title 28 U.S. Code §1254(1). The jurisdiction of the District Court was based upon Title 28 U.S. Code §1333(1).

QUESTIONS PRESENTED

1. Whether an injured longshoreman employed by a stevedore contractor can recover indemnity from a vessel by a libel *in rem* charging only negligence and not unseaworthiness.

2. Whether the allegations in the second amended libel (R. 30, 35) charged real unseaworthiness or mere negligence.

STATEMENT OF THE CASE

A libel *in rem* (only) was filed by respondent against the steamship THEOGENNITOR on April 23, 1951, seeking recovery of damages for injuries allegedly sustained while working as a longshoreman aboard the vessel, in the employ of a stevedore contractor. (R. 3) Petitioner appeared and defended only as owner and claimant of the vessel, released on bond in an agreed amount. (R. 14)

Before trial in the District Court respondent amended his libel *in rem* by enlarging the allegations of negligence. (R. 20) However, neither the original libel *in rem* nor the first amended libel *in rem* contained the

word "unseaworthiness", making no pretense of charges other than "negligence".

Initially Judge McLaughlin granted petitioner's motion to dismiss the libel *in rem* at the close of respondent's evidence on the ground that respondent had neither alleged nor proved unseaworthiness, which the court held to be necessary upon a libel *in rem* claiming a maritime lien. (R. 46)

Thereafter, with leave of court, respondent filed a second amended libel *in rem,* which contained general allegations that the injuries were due to the "unseaworthy condition to the vessel" and to "the negligence of the master and crew", followed by fourteen specific charges of alleged fault. (R. 34, 35) Attacking these, petitioner filed exceptions on the ground that they did not constitute charges of real unseaworthiness as distinguished from mere negligence, the contention being that respondent could not recover *in rem* on charges of negligence alone. (R. 38)

Subsequently Judge Fee (now on the Court of Appeals) after extended oral arguments and full written briefs, again sustained petitioner's contentions by opinion filed January 7, 1952 (R. 55) upon which final decree of dismissal was entered. (R. 77) Respondent's appeal resulted in a reversal (R. 107), inducing this petition.

Before appeal respondent never attempted recovery against petitioner itself by an amended libel *in personam* praying foreign attachment to obtain equivalent security, as twice suggested by the trial court. (R. 46, 55, 60)

This litigation seeks to test and settle the nature and scope of an injured longshoreman's right or remedy under the general maritime law to a maritime lien by a libel *in rem*.

REASONS FOR GRANTING THE WRIT

A. Conflict of Decisions

There is a definite conflict between the instant decision and several decisions of the Courts of Appeals for the Second and Third Circuits on the important question of whether an allegation of failure to use adequate appliances available aboard a vessel constitutes a charge of true unseaworthiness or of mere negligence.

Hanrahan v. Pacific Transport Co., Ltd. (C.A. 2) 262 Fed. 951, cert. den. (1919), 252 U.S. 579;

The Santa Barbara (C.A. 2) 263 Fed. 369 (*in rem*);

The Petroline (C.A. 2) 271 Fed. 273 (*in rem*);

Cookingham v. U.S. (C.A. 3) 184 F.(2d) 213, cert. den. 340 U.S. 935;

Adamowski v. Gulf Oil Corp. (C.A. 3) 197 F. (2d) 523, (*per curiam*) aff'g. 93 F.Supp. 115.

In *Hanrahan v. Pacific Transport Co., Ltd.*, 262 Fed. 951, the Court of Appeals for the Second Circuit when affirming a directed verdict in the trial court for the vessel owner, held in opinion by Judge Hough that a seaman injured by falling overboard had not proved unseaworthiness (as distinguished from negligence) by showing a failure of the vessel's officers to have in-

stalled on deck an available handrail supported by removable stanchions, the court saying:

> "(2) Every allegation of fact made by plaintiff has been assumed, yet we hold that no jury could on such facts declare the ship unseaworthy.
>
> "Seaworthiness is a relative term; a vessel may have that quality in port, and yet be wholly unfit for rough water (*McLanahan v. Universal, etc., Co.*, 1 Pet. 170, 7 L.ed. 98); and to say that this ship was unseaworthy because she had no handrail up, while lying alongside a wharf discharging cargo, is merely untrue." (Emphasis supplied)

Hanrahan v. Pacific Transport Co., Ltd., 262 Fed. 951, 952.

The material facts involved in the *Hanrahan* case and alleged in the present case are essentially the same. In each the injured person fell from the deck of a vessel during conditions of darkness, the charge of fault being the absence of a handrail or safety guard. (R. 34, 35) Although the *Hanrahan* case was an action at law and the present case is an admiralty suit *in rem,* these procedural differences are unrelated to the substantive distinction between unseaworthiness and negligence.

The conflict created by the decision of the Ninth Circuit in the present case with the decision of the Second Circuit in the *Hanrahan* case is not only clear but also current. Adhering to the established distinction between true unseaworthiness and mere negligence as declared by Judge Hough in the older case, his opinion has been very recently cited with approval in *McMahan v. S.S. Panamolga* (D. Md.) 127 F.Supp. 659, and

Daniels v. Pacific Atlantic S.S. Co. (E.D.N.Y.) 120 F. Supp. 96, 99.

In *The Santa Barbara* (C.A. 2) 263 Fed. 369, again the Second Circuit held that failure to keep in position on board a vessel an available chain to support its smokestack was but negligence, for which the crew member could not recover by a libel *in rem,* the court saying:

> "* * * it was at most no more than his (master's) personal negligence in handling or mishandling good and proper appliances duly furnished by the owners. As nothing was defective in fit or material, and everything suggested as proper even by libelant's proctor, was provided for the ship, we hold that no unseaworthiness was shown." (Emphasis supplied)
>
> *The Santa Barbara* (C.A. 2) 263 Fed. 369, 370.

In *The Petroline* (C.A. 2) 271 Fed. 273, a crew member sought recovery *in rem* upon allegations of an unsuitable block used to prop open a ventilator cover. Affirming a decree for the shipowner, the Second Circuit followed its earlier decision in the *Hanrahan* case, holding that since the vessel had provided other blocks both available and adequate it was not "unseaworthy".

Harmonizing with these earlier Second Circuit decisions the Court of Appeals for the Third Circuit declined to extend the doctrine of unseaworthiness to an inherently sound vessel, which was temporarily rendered unsafe by a transitory condition on board, in the case of *Cookingham v. U.S.* (C.A. 3) 184 F.(2d) 213, cert. den. 340 U.S. 935.

In *Adamowski v. Gulf Oil Corp.* (C.A. 3) 197 F.(2d)

523, the Third Circuit was consistent with its former ruling when it affirmed a trial court's conclusions by wholly approving its reasons for disallowing damages to a crew member charging unseaworthiness because of an oily deck and a dark passageway. The trial court's opinion thus expressly adopted said:

> "The passageway in which the plaintiff slipped was perfectly sound. Its unsafe condition was the result of the temporary presence of a foreign substance upon it, or the result of a temporary absence of light in it." (Emphasis supplied)
>
> *Adamowski v. Gulf Oil Corp.* (E.D.Pa.) 93 F.Supp. 115, 117.

The allegations of the second amended libel (R. 30, 35) as to the failure to light or guard or otherwise "employ existing appliances" to protect the area, which the Ninth Circuit characterized as a "dangerous condition" (R. 108), are exactly the same type of defects which both the Second Circuit and the Third Circuit have repeatedly held would not constitute unseaworthiness.

As related to the clear, continuing conflict between the decision of the Ninth Circuit in the present case which invades the integrity of established general maritime law, and the decisions of the Second and Third Circuits in the cases reviewed, which apply its principles, we submit that their precedents should be supported by this Court for reasons of certainty and stability as recited in the dissenting opinion of Mr. Justice Roberts, with which Mr. Justice Frankfurter joined in *Mahnich v. Southern S.S. Co.*, 321 U.S. 96, 105.

B. Important Unsettled Question

An important undetermined question of maritime law is presented which should be resolved by this Court. The question: Can a longshoreman, charging mere negligence alone, enforce a maritime lien by suit *in rem* although the same remedy is unavailable to a crew member?

Stated otherwise, this Court having classed both longshoremen and crew members as "seamen" by its decisions in *International Stevedoring Co. v. Haverty,* 272 U.S. 50, and *Seas Shipping Co. v. Sieracki,* 328 U.S. 85, will this Court countenance within that category inequitable inequality of relief *in rem* by allowing to longshoremen a remedy denied to crew members, who are the traditional wards of the admiralty courts? *Plamals v. Pinar del Rio,* 277 U.S. 151, 155-157; *The Osceola,* 189 U.S. 158, 176.

Complicating confusion as to the rights and remedies of longshoremen for damages has developed since the decision in 1946 by this Court in *Seas Shipping Co. v. Sieracki, supra,* which first introduced into the general maritime law the doctrine that a longshoreman employed by a stevedore contractor, being entitled to the "traditional securities" of a "seaman", is entitled to an absolute warranty of seaworthiness, supporting recovery *in personam* without actual fault or actual negligence by the vessel owner.

When commenting upon the uncertain future significance of this far-reaching innovation created by the decision of this Court in *Sieracki,* Mr. Justice Frank-

furter in his concurring opinion in *Pope & Talbot, Inc., v. Hawn,* said:

> "That decision inevitably raises doubts whether longshoremen are still entitled to recover against a shipowner for negligence, except insofar as a state right of action for negligence, to which the state rule on contributory negligence would be applicable, is enforceable. Cf. The Hamilton, 207 U.S. 398, 52 L.ed. 264, 28 S.Ct. 133. For The Osceola, in recognizing crew members' right of action for unseaworthiness, also held that they had no such right against the shipowner for negligence. Did Sieracki, in holding that longshoremen laboring like seamen of old in the 'service of the ship' were entitled to recover for unseaworthiness, leave them also with the negligence cause of action which The Osceola denied to seamen?"
>
> *Pope & Talbot, Inc., v. Hawn,* 346 U.S. 406, 416.

The precipitate of precedent having been disturbed, now steamship operators, waterfront workers, stevedore companies and insurance interests are anxious for early reconciliation by this Court in a decision definitely determining whether longshoremen charging negligence only against a vessel *in rem* are to be given a greater remedy than members of its crew, who alone were formerly a "favored class" accorded special protection as wards of the admiralty courts. *Warner v. Goltra,* 293 U.S. 155, 162. The expediency for such clarification on complex questions now presented under the doctrines of unseaworthiness and negligence was recognized by remarks of Mr. Justice Harlan in his very recent opinion for the Second Circuit in *Dixon v. U.S.,* 219 F.(2d) 10, 15.

Upon this aspect of the petition it is the essence of petitioner's contention that if longshoremen are to remain within the category of "seamen" then they should be treated as such when suing a vessel *in rem* to enforce a maritime lien for damages—in other words, if accorded the benefit of the seamen's right it should be accompanied by the limitation of the seamen's remedy.

For almost half a century that particular limitation has been accepted as axiomatic since declared in *The Osceola,* 189 U.S. 158, where in 1902 this Court said that the vessel and the owner are liable to indemnify the "seamen" for injuries received in consequence of "unseaworthiness" but

> "That the seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, * * * " (Emphasis supplied)
>
> *The Osceola,* 189 U.S. 158, 175.

C. Decision Against Weight of Authority

The erroneous decision of the Court of Appeals for the Ninth Circuit conflicts with the weight of authority and misapplies recent decisions of this Court.

The ruling of the Ninth Circuit was largely rested on *Pope & Talbot, Inc., v. Hawn,* 346 U.S. 406, which was wholly unrelated to remedy, the real issue here. That was a civil action at law seeking merely a judgment *in personam.* The pending proceeding is solely an admiralty suit *in rem* to enforce a maritime lien. The two cases in the matter of remedy stand in complete contrast. Obviously the Ninth Circuit misapplied the *Hawn* case in deciding the present case, which essentially involves the single question of the exact basis

upon which a longshoreman can obtain recovery, not from the vessel owner *in personam,* but from the vessel itself *in rem.*

The Ninth Circuit also relied upon the recent decision of this Court in *Boudoin v. Lykes Bros. Steamship Company, Inc.,* 348 U.S. 814. That again was a law action *in personam,* not an admiralty suit *in rem,* so that it is likewise distinguishable. Furthermore, that case and the present case are dissimilar in that in *Boudoin* unseaworthiness was found because of an inherent defect in a seaman—his "proclivity for assaulting people", while here unseaworthiness is claimed not because of any defect in either vessel or its appliances as existing when supplied by the shipowner, but only in condition as created subsequently by the alleged failure of the crew to use available sound appliances of the vessel. (R. 34, 35) We submit that the ruling in *Boudoin* is inapposite here and that the decision of this Court was misapplied by the Ninth Circuit.

The opinion of the Ninth Circuit patently misinterpreted this Court's decision in *Brady v. Roosevelt Steamship Company,* 317 U.S. 575. The opinion below asserts that "the widow recovered *in rem* for the death of her husband caused by negligence" (R. 111), when in truth this Court's opinion recites that the proceeding "was brought in the New York Supreme Court but was removed to the Federal District Court". *Brady v. Roosevelt Steamship Company,* 317 U.S. 575, 577. Therefore, that case could not have been an admiralty proceeding *in rem* and should not have been an unfavorable influence upon the appeal in this case.

In relying upon *The Max Morris,* 137 U.S. 1, to support the proposition that a longshoreman may recover *in rem* against a vessel for negligence without charging or proving unseaworthiness, the opinion of the Ninth Circuit was willing to assume more than the concurring opinion of Mr. Justice Frankfurter in *Pope & Talbot, Inc., v. Hawn,* supra, where he registered serious doubt that "negligence" alone was involved when "unseaworthiness" was indicated, it being merely undesignated as such in terminology. *Pope & Talbot, Inc., v. Hawn,* 346 U.S. 406, 416.

To summarize, a right reading of this Court's decisions upon which the Ninth Circuit relied in its opinion reflects simply unsound construction which should be quickly corrected to avoid continued confusion.

CONCLUSION

For reasons of clarity and certainty upon a critical question of general maritime law—important to all directly concerned in the employment of maritime workers and in operating ships — the writ of certiorari sought by this petition should be granted.

Respectfully submitted,

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May 25, 1955

JUN 4 1955
HAROLD B. WILLEY, Clerk

IN THE
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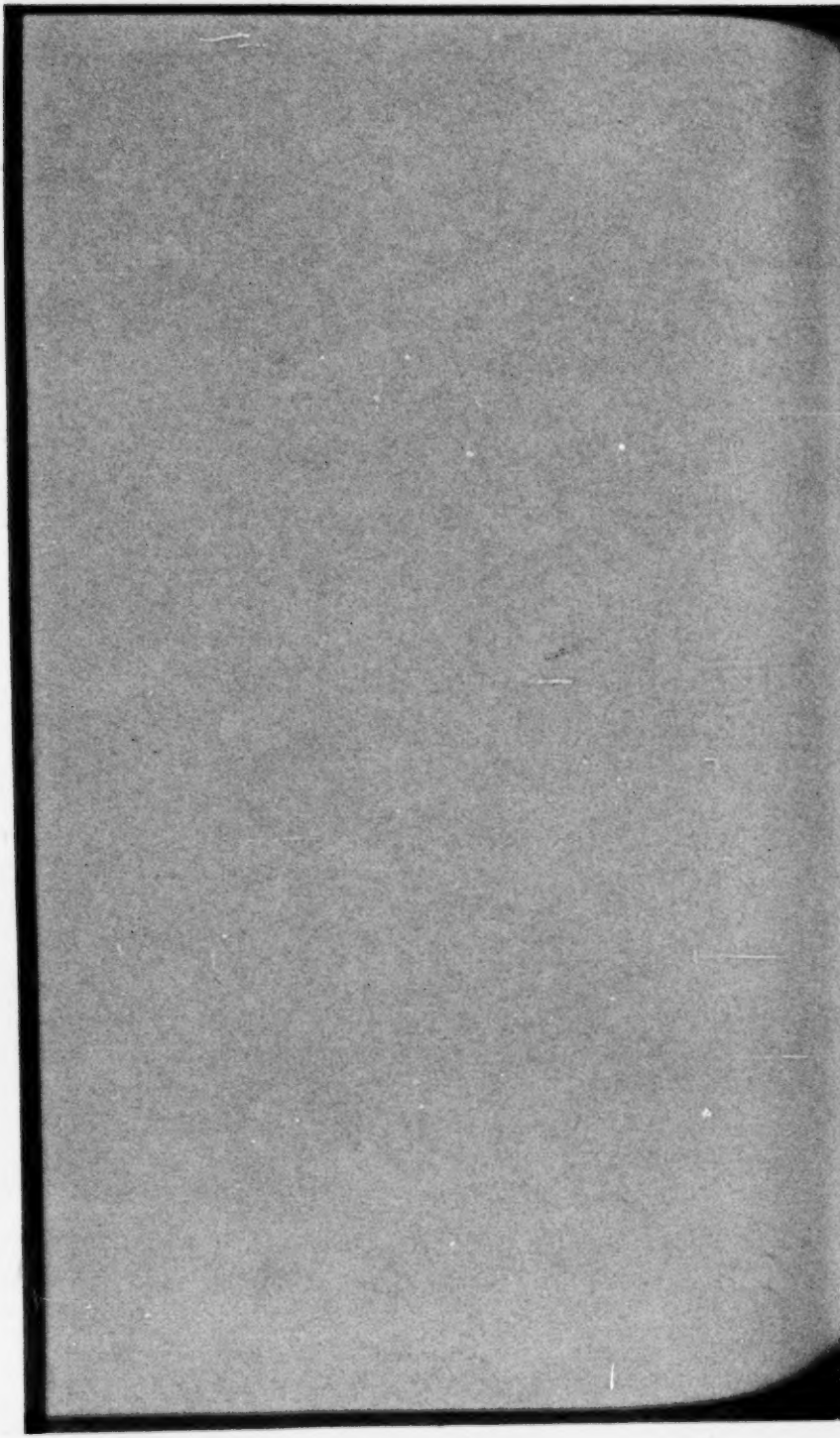

IN THE

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OCTOBER TERM, 1954

No. 821

SOC. ARMADORA DEL NORTE, a corporation, Claimant of the Steamship THEOGENNITOR, etc., *Petitioner,*

vs.

ARNE ARMUS LAHDE, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARNE ARMUS LAHDE, *Appellant*, vs. SOC. ARMADORA DEL NORTE, a Corporation, Claimant of the Steamship Theogennitor, etc., *Appellee*.	No. 14,155 Mar. 16, 1955

Appeal from the United States District Court for the Western District of Washington, Southern Division

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Before: DENMAN, Chief Judge, and ORR and POPE, Circuit Judges

DENMAN, Chief Judge

Lahde appeals from a decree of the District Court dismissing without a hearing on the merits his amended libel in rem against the steamship THEOGENNITOR in which he, a stevedore, sought damages for injuries arising from his falling into an open hatch in an illy lighted passageway leading to his place of work. The grounds of the dismissal are that the libel failed to allege a cause of action either based on unseaworthiness of the vessel or on negligence on the part of the officers and crew.

A. *The Libel Sufficiently States the Injuries Were Caused by the Vessel's Unseaworthiness.*

The libel alleges that the stevedore came on board the vessel as an invitee to remove a stringer of timber on the starboard side of the ship, the removal a part of stevedoring the ship. To reach the stringer he would pass from an open door on the portside of the ship, enter 'tween the deck space

and walk to an open door on the starboard side. The 'tween deck space was dimly lighted and nevertheless had an open hatch from which two hatchboards had been removed. This dangerous condition, the libel alleges, was known "to the owner, master and crew."

In this dimly lighted area the stevedore fell through the open hatch and was injured. The libel continues with the allegation, "Thirteenth: Said accident was caused, without any contributing fault or neglect on the part of the libelant, solely and proximately by the defective, unsafe, and *unseaworthy condition* of the vessel and its failure to provide proper and sufficient ways, works, means and appliances;" (Emphasis supplied.) The above allegations clearly state a cause of action for damages caused by the vessel's unseaworthiness. The parties agree that a libel in rem against the vessel may be maintained by the stevedore for injuries from such unseaworthiness.

However, under recent decisions of the Supreme Court, we think such a cause of action is stated even though the unseaworthy condition is unknown to the owner. Boudoin v. Lykes Bros. Steamship Co., Inc., No. 406, October Term, 1954, was decided February 28, 1955. There Boudoin, a seaman, recovered damages for a blow on the head from another seaman. The attacking seaman, on evidence of his conduct *after* his attack, was found to have a savage and vicious nature, so different from the ordinary seaman that his presence made the vessel unseaworthy and recovery was based on that ground. There is not the slightest evidence that the owner knew or could have known the vicious character of the attacking seaman when Boudoin was hit on the head and the cause of action arose. The district court held the vessel unseaworthy because of the attacking seaman's vicious nature and that "the warranty of seaworthiness is a kind of liability without fault in which knowledge of the circumstances creating the unseaworthiness is immaterial." Boudin v. Lykes Bros. S.S. Co., 112 F. Supp. 177, 180. The court of appeals

reversed, holding that the "shipowners" were not shown to have knowledge of the seaman's character.

The Supreme Court, in reversing the court of appeals and affirming the district court, stated:

> "We see no reason to draw a line between the ship and the gear on the one hand and the ship's personnel on the other. A seaman with a proclivity for assaulting people may, indeed, be a more deadly risk than a rope with a weak strand or a hull with a latent defect."

The failure to replace the gear of the two hatch boards on the open hatch in the dim light is certainly as dangerous an unseaworthiness as the vicious nature of a crew member. Here, as in the latter case, the vessel would be liable though the unseaworthiness is unknown to the owner.

So also in the recent case of Pope and Talbot v. Hawn, 346 U.S. 406. There Hawn, a carpenter invitee of the shipowner to be on the ship, as was stevedore Lahde here, was injured, as was Lahde, by falling into an open hatch. Hawn was held entitled to damages since the open hatch created unseaworthiness in the vessel. There is no mention in the opinion that the shipowner knew the hatch was open.

The case of Mahnich v. Southern S.S. Co., 321 U.S. 96, was not under the Jones Act but rested on general maritime law. The court, in holding Mahnich entitled to damages, stated:

> "Petitioner, a seaman on respondent's vessel, the 'Wichita Falls,' was injured, while at sea, by a fall from a staging, which gave way when a piece of defective rope supporting it parted. The rope was supplied by the mate when there was ample sound rope available for use in rigging the staging. The question is whether the defect in the staging was a breach of the warranty of seaworthiness rendering the owner liable to indemnify the seaman for his injury."
>
> * * *
>
> "In thus refusing to limit, by application of the fellow servant rule, the liability of the vessel and owner for unseaworthiness, this Court was but applying the familiar and then well established rule of *non-maritime torts*,

that the employer's duty to furnish the employee with safe appliances *and a safe place to work*, is nondelegable and not qualified by the fellow servant rule. * * * It would be an anomaly if the fellow-servant rule, discredited by the Jones Act as a defense in suits for negligence, were to be resuscitated and extended to suits founded on the warranty of seaworthiness, so as to lower the standard of the owner's duty to furnish safe appliances below that of the land employer.

"The staging from which petitioner fell was an appliance appurtenant to the ship. It was unseaworthy in the sense that it was inadequate for the purpose for which it was ordinarily used because of the defective rope with which it was rigged. Its inadequacy rendered it unseaworthy, whether the mate's failure to observe the defect was negligent or unavoidable. Had it been adequate, petitioner would not have been injured and his injury was the proximate and immediate consequence of the unseaworthiness. See The Osceola, supra, 174-175, and cases cited. Any negligence of the mate in selecting the rope and ordering its use as a part of the staging, or of the boatswain in using it for that purpose, could not relieve respondent of the duty to furnish a seaworthy staging. *Whether petitioner* [the owner] *knew of the defective condition of the rope does not appear, but in any case the seaman, in the performance of his duties, is not deemed to assume the risk of unseaworthy appliances.* The Arizona v. Anelich, supra, 123-124; Beadle v. Spencer, supra, 129-130; Socony-Vacuum Co. v. Smith, supra." (Emphasis supplied.)

The shipowner as much owed to its invitee stevedore as to a sailor the duty to furnish "the employee . . . a safe place to work" with "is nondelegable" as it is not in "non-maritime torts."

It is immaterial whether the shipowner, invitor of the stevedore on the ship, knew of the failure to place the ship's "appliances," here two hatch boards, on the open hatch dangerous in the defective lighting, since it owed the same "nondelegable" duty to furnish him a safe place to work as does a land employer.

B. ***A Stevedore May Recover in rem Against the Ship to Which the Owner Invites Him for the Negligence of its Crew Members.***

This court so held in The Joseph B. Thomas, 86 Fed. 658 (Cir. 9), where the stevedore working in the hold was injured by a keg falling through the hatch hold above him. A sailor negligently caused the keg to fall from a pile of hatch covers on which it rested. This case is followed by our decision in The Aymerich, 26 F. 2d 173 (Cir. 9), where we considered the merits of the contention that the charged negligence of crew members which injured a stevedore creates a right to libel in rem but upheld the finding of the lower court that there was no negligence. We held similarly in The Santa Cecilia, 22 F. 2d 251 (Cir. 9), *where recovery in rem* was denied because no negligence was shown.

Likewise in the Max Morris, 137 U.S. 1, the longshoreman recovered in rem for injuries resulting from the ship's officers' negligence. So also in Braby v. Roosevelt S.S. Co., 317 U.S. 531, where a widow recovered in rem for the death of her husband caused by negligence, he being an invitee on on the vessel. So also in The Helios, 12 Fed. 732 (D.C., S.D., N.Y.); Gerrity v. Bark Kate Conn, 2 Fed. 241 (D.C., E.D., N.Y.).

We have also held that the stevedore may recover in admiralty in personam for the negligence of the crew. Tidewater Associated Oil Co. v. Richardson, 169 F. 2d 802 (Cir. 9); Grays Harbor Stevedore Co. v. Fountain, 5 F. 2d. 385 (Cir. 9).

Appellant contends that all these cases are against the law as it is today. Now, it contends, the stevedore's status must be deemed identical with that of a seaman in his relationship with the owner and the vessel. It relies on International Stevedore Co. v. Haverty, 272 U.S. 50, involving the Act of June 5, 1920, 41 Stats. 988, 1007, giving seamen the same right to sue the employer as is given railway employees. In holding that a stevedore working on a vessel was entitled to the same right the court states:

> "It is true that for most purposes, as the word is commonly used, stevedores are not 'seamen.' But words are flexible. The work upon which the plaintiff was engaged was a maritime service formerly rendered by the ship's crew. Atlantic Transport Co. v. Imbrovek, 234 U.S. 52, 62. We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship. The policy of the statute is directed to the safety of the men and to treating compensation for injuries to them as properly part of the cost of the business. If they should be protected in the one case they should be in the other. In view of the broad field in which Congress has disapproved and changed the rule introduced into the common law within less than a century, we are of the opinion that a wider scope should be given to the words of the act, and that in this statute 'seamen' is to be taken to include stevedores employed in maritime work on navigable waters as the plaintiff was, whatever it might mean in laws of a different kind."

Ignoring the words "It is true that for most purposes, as the word is commonly used, stevedores are not seamen" appellee contends that stevedores for *all* purposes are seamen and, since it is unquestioned that seamen in the absence of statute cannot recover for negligence of fellow crew members, the stevedore cannot.

Appellee also relies on language in Seas Shipping Co. v. Sieracki, 328 U.S. 85, holding that for the "purpose" of the liability there claimed the stevedore's rights are the same as a seaman's, the court stating at page 99:

> " '* * * for injuries incurred while working on board the ship in navigable waters the stevedore is entitled to the seaman's traditional and statutory protection, regardless of the fact that he is employed immediately by another than the owner. *For these purposes* he is, in short, a seaman because he is doing a seaman's work and incurring a seaman's hazards.' Seas Shipping Co. v. Sieracki, 328 U.S. 85, 99." (Emphasis supplied.)

The "purpose" of the Sieracki case was the determination of the stevedore's right to recover in a civil action at law for an injury due to the vessel's unseaworthiness. As to this the holding is that the stevedore is identical with the seaman. From this, the reasoning of appellee again jumps to the conclusion that for *all purposes* the rights of the stevedore are the same as those of the seaman and since the seaman has no right to recover for the negligence of the officers and crew, either in rem or in personam, the stevedore has no such right.

The Supreme Court holds to the contrary in Pope and Talbot v. Hawn, 346 U.S. 406. That is a case at common law in which Hawn, aboard the ship as a carpenter employed by a firm engaged to repair it, sued the shipowner for injuries arising from the negligence of the shipowner. The Court held that the shipowner's liability was that of the admiralty law. It disposes of appellee's contention concerning the case of Seas Shipping Co. v. Sieracki, adversely to appellee, stating at page 413: "The fact that Sieracki upheld the right of workers like Hawn to recover for unseaworthiness does not justify an argument that the Court thereby blotted out their long-recognized right to recover in admiralty for negligence."

The "long-recognized right" of the stevedore is to recover both in personam and in rem for such negligence. We hold that our decision in the case of The Joseph B. Thomas states the law as it is today and that stevedore Lahde's libel properly alleges his claim that he is entitled to recover in rem from the steamship *Theogennitor* for his injuries arising from the negligence of members of its crew.

The decree is reversed.

(Endorsed:) Opinion. Filed Mar. 16, 1955.
Paul P. O'Brien, Clerk.

[Reported in 220 F.(2d) 357; 1955 A.M.C. 828.]